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FEC Commissioner Ann Ravel: It's Not My Role To Apply Constitutional Principles

Posted By [Caroline Hunter](#) On 2:03 PM 08/16/2016 In | [No Comments](#)

Commissioner Ann Ravel's tenure on the Federal Election Commission has been marked by a progression from foolishness to nihilism as to the role of the agency, the importance of the First Amendment, and the role of the courts in interpreting the law. Criticism isn't unusual coming from me, a Republican member of the Federal Election Commission, as I often disagree with my Democratic-leaning colleagues on how best to interpret and apply campaign finance law. But her recent remarks and actions are a symptom of an accelerating devolution: Commissioner Ravel was recently quoted in *The Washington Post* as saying that her "role in the Commission is not to apply constitutional principles" because she's "not on the Supreme Court." The fact that Commissioner Ravel said this while explaining her vote to censor a news organization for hosting a candidate debate would be troubling even if it weren't part of a disturbing trend.

Commissioner Ravel, like other FEC commissioners, took an oath to "support and defend the Constitution" before assuming public office. This obligation encompasses familiarity with court rulings analyzing the constitutionality of the laws the FEC administers. For example, the D.C. Circuit's *Van Hollen* decision recently emphasized the FEC's "unique mandate" to respect First Amendment rights. The court states that the "FEC is unique among federal administrative agencies, having as its sole purpose the regulation of core constitutionally protected activity," and that we differ from other agencies because "every action the FEC takes implicates fundamental rights."

Commissioner Ravel has made several recent public statements that suggest a fundamental misunderstanding of the agency on which we both serve. For example, she has repeatedly claimed—incorrectly—that Republican Commissioners at the FEC refuse to enforce the law. What she doesn't seem to recognize is that Americans have a constitutional right to speak and associate freely, and overly aggressive enforcement actions chill and harm those rights. My approach to enforcing federal campaign finance law is guided by the First Amendment and the principles protecting political speech. In close cases, I follow the Supreme Court's edict: "Where the First Amendment is implicated, the tie goes to the speaker, not the censor." Thus, I have consistently declined to force people to defend their exercise of First Amendment freedoms from government investigation unless allegations are based on more than speculation and evidence indicates clear violations. Nor will I read the law more broadly than it has been written to punish activity that Congress did not prohibit.

In her public speeches, Commissioner Ravel often claims that the FEC's purpose is to encourage public participation and "fairness" in the electoral process. In this, she is simply mistaken. The FEC's statutory responsibilities are to "administer, seek to obtain compliance with, and formulate policy with respect to" federal campaign finance law, and civil enforcement of those laws. Encouraging public participation and fairness in politics are laudable goals, but noticeably absent from this list.

Yet another illustration of how Commissioner Ravel misapprehends the FEC's purpose is the "women's forum" that she held last year at the FEC. The forum's stated goals were to identify challenges that women face in politics and find ways to encourage more women to run for public office. But the FEC is tasked with the delicate job of regulating political speech consistently with the First Amendment, not engineering social policy. Although greater participation in the political process is always welcome, the FEC does not pick favorites, be they women candidates or anyone else.

Commissioner Ravel's efforts to conjure popular support for her skewed agenda are similarly misguided. She has repeatedly urged members of the public to write to the FEC in favor of her pet project of the moment, whatever it might be, and then tried to use the sheer volume of public feedback as a weapon to bludgeon her colleagues to back her agenda. But no amount of public support could justify agency action that is arguably unconstitutional, exceeds our statutory authority, or overlaps with issues pending before Congress.

Commissioner Ravel's latest ploy is to try to get the FEC to rescind a 10-year old ruling that allows certain U.S. companies and their U.S. employees to participate in the political process through duly organized, registered, and fully regulated PACs. And this she seeks to do without inviting any public comment. Revoking the ruling would accomplish precisely... nothing, however, because the underlying legal framework on which the ruling is based would remain in place. Thus, Commissioner Ravel misapprehends the process to achieve her own misguided goals.

Congress designed the FEC so that its members, no more than three from the same political party, will reflect different political and ideological views, to prevent any political party from misusing the agency to discriminate against political rivals. But it should not be too much to expect each Commissioner to appreciate and understand our agency's unique role and fundamental principles of administrative and constitutional law. I take seriously my oath of office and my responsibility to competently administer the law and defend precious First Amendment rights, and I encourage my colleague to do the same.

*Caroline C. Hunter serves as Commissioner and former Chair of the Federal Election Commission. The views expressed are her own and not those of the Commission.*

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